

DRAFT SEPTEMBER 2021 – NOT APPROVED

INTRODUCED BY: \_\_\_\_\_

AN ORDINANCE AMENDING SECTIONS 66-60 AND 66-65 OF THE THORNTON CITY CODE TO MODIFY THE REQUIREMENTS AND PROCEDURES FOR THE FORMATION OF METROPOLITAN DISTRICTS AND AMENDING THE CITY'S MODEL SERVICE PLAN AND MODEL INTERGOVERNMENTAL AGREEMENT WHICH SERVE AS THE APPLICATION FORMS FOR METROPOLITAN DISTRICTS.

WHEREAS, Metropolitan Districts are independent units of local government separate and distinct from the City as established pursuant to Sections 32-1-101, et seq., C.R.S.; and

WHEREAS, the City has the authority to regulate Metropolitan Districts within the jurisdictional boundaries of the City under the Statutes of the State of Colorado; and

WHEREAS, Chapter 66 of the City Code regulates the procedure for the formation of Metropolitan Districts; and

WHEREAS, the City's model service plan and model intergovernmental agreement are the required application forms for Metropolitan Districts; and

WHEREAS, the City has an important and substantial interest in ensuring that Metropolitan Districts remain a viable financial tool available to developers as well as protect the interests of citizens; and

WHEREAS, a reasonable balance between the interests of developers establishing Metropolitan Districts to finance development and the interest of the City to protect its citizens from unknown or unreasonable financial burden contributes to the general welfare; and

WHEREAS, the ordinance amends Chapter 66 of the City Code and model service plan and model intergovernmental agreement to incorporate changes to the regulations and procedures for Metropolitan District formation for the purposes of, among other things, providing greater informational disclosure and financial protections for homeowners; and

WHEREAS, the amendments are based on State law and supplementary requirements that the City deems necessary for the overall health, safety and welfare of the citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. Section 66-60 of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken below, to read as follows:

**Sec. 66-60. Procedure.**

- (a) *Form of application.* Any request for approval of a Metro District within the city's boundaries shall be in the form of a formal application as follows:
- (1) A document designated as a "service plan" utilizing the model service plan approved by the city manager which shall contain:
- a. All of the information required by C.R.S. § 32-1-202(2), as well as the requirements set forth in this subsection which are additional to those required by C.R.S. § 32-1-202(2).
  - b. A statement that the proposed Metro District shall not provide any ongoing governmental services, without the specific approval of the council, as evidenced by a council resolution, after a public hearing on the matter has been held, either at the time of adoption of the service plan or subsequent thereto.
  - c. The map of the proposed Metro District's boundaries shall have attached thereto a legal description of all properties included therein.
  - d. An itemization of any costs which are expected to be assumed by the city for construction of public improvements.
  - e. Proof of ownership for all properties within the proposed Metro District.
  - f. A copy of any and all of the proposed enabling, controlling, contractual and/or operations documents that would affect or be executed by the proposed Metro District, including the intergovernmental agreement between or among the Metro District, the city, TDA, or any other government, authority or district.
  - g. Statements regarding community engagement that ensure that residents have adequate opportunity to participate in Metro District meetings and remain apprised of the Metro District's operations and functions through a public website.
  - g-h. An assurance that the city would be provided with written notice of the date of hearing on the petition that the proponents would intend to tender to the district court.
  - h-i. Provisions that the Metro District shall have none of the following powers granted to the Metro District by state statute employed without the prior approval of the council, as evidenced by resolution after a public hearing thereon:
    - 1. The inclusion of properties within or the exclusion of properties from the boundaries of the Metro District;

2. The consolidation with any other special district pursuant to C.R.S. § 32-1-101 et seq.
3. The use of eminent domain powers for any real property.
4. The imposition or collection of operation and maintenance fees subsequent to issuance of a Certificate of Occupancy unless a majority of the Metro District board is comprised of residents who have voted in favor of imposing and collecting such fees. For purposes of this subsection, the term "resident" shall mean any person who currently lives within the Metro District's boundaries, or owns or rents a developed residential lot that contains a dwelling unit other than a model home within the Metro District's boundaries.

i-l A statement that the district shall not be authorized to impose, receive, collect or pledge to any indebtedness of the district a public improvement fee (PIF) unless otherwise approved by the city.

j-k Provisions that the Metro District shall take all action necessary to dissolve, pursuant to C.R.S. § 32-1-701 et seq., upon an independent determination of the council that the purposes for which the Metro District was created have been accomplished, whereupon council shall adopt a resolution, after a public hearing thereon, stating that the proposed Metro District shall be dissolved; provided, however, that minimum and maximum time limits upon the council's determination may be set forth in the service plan.

k-l Statements that the proposed Metro District will be subject to all of the city's zoning, subdivision, building code and other land use requirements.

m If multiple Metro Districts are proposed to serve different areas of one development, a statement of how the multiple district structure will operate and an assurance that no single district will retain control of all financial decisions for all the districts.

1. Under limited and justified circumstances, the city may, in its sole discretion, permit a single district within a multiple district structure to have some reasonable controls for the sole purpose of ensuring the completion of a very large and complex development. The service plan shall include statements justifying the need for such a district and what reasonable controls the district requires.

n. Under certain circumstances for large, multiphase developments with long anticipated timeframes for build-out, the city may require, in its sole discretion, statements that specify and limit improvements financed by different areas and/or phases of the development in order to ensure an equitable distribution of public improvement costs.

l.o. Provisions that the proposed Metro District will file with the city annually, within six months of the close of the fiscal year, an annual report setting forth the information outlined in C.R.S. § 32-1-207(3)(c), a certificate of compliance with the Code, an annual financial statements audited in accordance with GAAS, unless otherwise exempted from audits by C.R.S. § 29-1-604. Also, copies of any filings made pursuant to SEC rule 15 c 2-12 shall be filed with the city.

(2) If the development served by the proposed Metro District does not have an Approved Conceptual Site Plan at the time of city council's consideration of the service plan, the service plan shall not include authorization for the Metro District to issue debt; impose a debt mill levy, operating mill levy, or fees; or enter into an intergovernmental agreement with the city. Once a Conceptual Site Plan for the development served by the Metro District is approved pursuant to Section 18-43 of the City Code, the Metro District may submit a request to the city for a service plan amendment to obtain authorizations for total debt issuance, maximum debt mill levy, maximum operating mill levy, and fees. The service plan amendment shall be submitted and considered by council in accordance with Section 66-65 of the City Code. The intergovernmental agreement shall include the information identified in Section 66-60(a)(3) of the City Code.

(2)(3) A written intergovernmental agreement with the city in the form of the model intergovernmental agreement approved by the city manager, to be approved subsequent to the city council's adoption of a resolution approving the service plan and the city's approval of a Conceptual Site Plan for the development within the proposed Metro District boundaries, which shall specify:

- a. None of the following powers granted to a Metro District by state statute ~~would~~ shall be employed unless otherwise provided in the intergovernmental agreement:
  - 1. The inclusion of properties within or the exclusion of properties from the boundaries of the Metro District.
  - 2. The refunding of any of the Metro District's outstanding bonds which would extend the maturity of the outstanding bonds, or increase the total debt service.

3. Any increase in the maximum debt mill levy or maximum operating mill levy above the cap.
  4. The consolidation of the Metro District with any other Metro District or Title 32 District.
  5. The acquisition, ownership, management, adjudication or development of water rights or resources.
  6. The use of eminent domain powers for any real property.
  7. Application for Greater Outdoors Colorado Trust Fund grants or other state or federal grants.
  8. Provision of services to properties outside the boundary of the city.
  9. Bond documents may not provide acceleration of debt against the issuer as a remedy.
  10. The authority to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services.
  11. The operation and maintenance of any part or all of the public improvements.
- b. In addition the intergovernmental agreement shall contain the following provisions:
1. Requirements for dissolution of the district upon the accomplishment of the purposes and undertakings for which the Metro District was formed. If the Metro District was only created for construction of public improvements, it shall dissolve when all outstanding debt is paid. If the Metro District was created for providing services or maintenance functions, the Metro District may continue so long as those services are provided.
  2. Acknowledgement by the Metro District that the city shall not be limited in implementing council or voter approved growth limitations, even though such actions may reduce or delay development within the Metro District and the realization of Metro District revenue.
  3. All activities by the Metro District will be subject to all of the city's zoning, subdivision, building code and other land use requirements.
  4. No telecommunication facilities owned, operated or otherwise allowed by the Metro District shall affect the

ability of the city to expand its telecommunication facilities or impair existing telecommunication facilities.

5. If there is a reimbursement agreement approved for public improvements installed by the district, all reimbursed funds shall only be used by the district to repay debt service.

6. All limitations contained in the service plan, including, but not limited to, those pertaining to the maximum debt mill levy, maximum debt mill levy imposition term, and maximum operating mill levy:

~~(a)~~i. Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a service plan amendment; and

~~(b)~~ii. Are, together with all other requirements of Colorado law, including in the "political or governmental powers" reserved to the state under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6). Any debt that exceeds the maximum debt mill levy and the maximum debt mill levy imposition term, shall be deemed a material modification of this service plan pursuant to C.R.S. § Section 32-1-207, C.R.S. and shall not be an authorized issuance of debt unless and until such material modification has been approved by the city as part of a service plan amendment. The city shall be entitled to all remedies available at law to enjoin such actions of the district.

7. Notices of disclosure shall be provided as follows:

~~(a)~~i. The Metro dDistrict will use reasonable efforts and due diligence to cause ~~the each~~ developer ~~or and~~ home builder to provide a notice of disclosure to the buyer ~~along with~~ at the time of entering into the purchase contract and obtain the home buyer's signed acknowledgment of the notice of disclosure. The notice of disclosure shall that describes the ~~impact of the district mill levy and fees~~ general purpose of the Metro District and financial impact on each residential

property, and shall specifically provide the information required by C.R.S. § 38-35.7-110, as amended from time to time.

~~(b)~~ii. The Metro dDistrict shall record the notice of disclosure for each property within the district with Adams County at the time the plat is recorded, or record the notice of disclosure for each property prior to any building permits for the subdivision being issued if the subdivision plat has already been filed. The Metro District shall provide the city with a copy of such notice of disclosure if the subdivision plat has already been filed with Adams County the recorded notice of disclosure. The notice of disclosure shall include ~~the maximum mill levy that may be assessed and associated taxes that may be imposed on the property for each year the district is in existence~~ all information required by C.R.S. § 38-35.7-110, as amended from time to time.

~~(c)~~iii. The Metro dDistrict will provide the disclosure notice to the developer or home builders for prominent display at all sales offices, and inspect the sales offices within the district boundaries on a quarterly basis to assure the information provided is accurate and prominently displayed ~~use reasonable efforts and due diligence to cause the developer or home builder to provide information to potential residential buyers by furnishing information describing the key provisions of the approved district to the developer or home builder for prominent display at all sales offices, and by inspecting the sales offices within the district's boundaries on a quarterly basis to assure the information provided is accurate and prominently displayed. Such information shall include the maximum mill levy and associated taxes and fees that may be imposed on each property for each year the district is in existence, and a description of the improvements that are or have been paid for by the district.~~

8. The district is not authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance,



operate or maintain television relay and translation facilities and services.

9. Public improvements will be designed and constructed in accordance with the standards, specifications, and approval of the city and any other governmental entities having proper jurisdiction.
10. Prior to the issuance of any privately placed debt, the district shall obtain the certification of an external financial advisor.
11. The district shall not exercise its city sales and use tax exemption.

~~(3)~~(4) Copies of the service plan and intergovernmental agreement, including supporting information as required in subsections (a)(1) through (a)(3) of this Section 66-60, together with a nonrefundable application fee, as established by resolution of the city council, shall be forwarded to the city development department at 9500 Civic Center Drive, Thornton, Colorado 80229. The applicant shall pay all reasonable fees and expenses incurred by the city if the city chooses to retain outside financial, legal, accounting, feasibility or other expertise to assist in the review of the application or service plan.

~~(4)~~(5) If a proposed Metro District submits application documents that deviate from the form or content of the model service plan and model intergovernmental agreement, the documents will be reviewed by the city's financial and legal consultants at the applicant's expense.

(b) *Considerations of review.*

- (1) At the public hearing the city council shall disapprove the service plan unless evidence satisfactory to the city council of each of the following is presented:
  - a. There is sufficient existing and projected need for organized services in the area to be serviced by the proposed Metro District.
  - b. The existing service in the area to be served by the proposed Metro District is inadequate for present and projected needs.
  - c. The proposed Metro District is capable of providing economical and sufficient facilities and services to the area within its proposed boundaries.
  - d. The area to be included in the proposed Metro District has or will have the financial ability to discharge the proposed bond financing on a reasonable basis.
- (2) If disapproval is not required, it is entirely within the discretion of the city council to approve, conditionally approve or disapprove the



creation of a Metro District within the city's boundaries. Any such decision by the council will be a legislative, not a quasi-judicial act, and no person shall have any right, by virtue of this article or otherwise, to create a Metro District within the city's boundaries. If the council chooses to consider whether or not the creation of a Metro District is in the best interest of the area proposed to be served thereby, the council may choose to apply the following criteria, in addition to such other information or other criteria as it deems appropriate and pertinent in making a decision:

- a. Whether the facility and service standards of the proposed Metro District are compatible with the facility and service standards of the city.
- b. Whether the creation of the proposed Metro District will be in the best interests of the area proposed to be served.

- (3) Exclusions. The city council may exclude territory from a proposed Metro District prior to approval of the service plan submitted by the proposed Metro District. The petitioners shall have the burden of proving that the exclusion of such property is not in the best interest of the Metro District. Any person owning property in the geographic area of the proposed Metro District who requests his or her property to be excluded from the Metro District shall submit a written request for exclusion to the city council at or prior to the hearing in order to be considered. However, the city council shall not be limited in its action with respect to exclusion of territory based only upon such request.

- 2. Section 66-65 of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken below, to read as follows:

**Sec. 66-65. Compliance; modification; enforcement.**

- (a) Upon final approval by the district court for the organization of the Metro District, the improvements, construction schedule, financial arrangements and date of dissolution of the Metro District shall conform to the approved service plan.
- (b) Material modifications shall be as follows:
  - (1) After the organization of a Metro District and pursuant to the provisions of this article, material modifications of the service plan, as originally approved, may be made by the board of directors of the Metro District only by petition to and approval by council in substantially the same manner as is provided for the approval of an original service plan in Section 66-60; but the processing fee for such modification procedure shall be as established by resolution of the council. Such approval of modifications shall be required with regard

to changes of a basic or essential nature, whether or not they are deemed to be immaterial by the Metro District's board of directors, and shall include but not be limited to:

- a. Any change in or addition to the public improvements to be constructed or a significant change in the timing of their construction.
- b. The types of services, if any, provided by the Metro District.
- c. A decrease in the financial ability of the district to discharge the existing or proposed indebtedness.
- d. Any debt issued that results in the Metro District exceeding the maximum debt mill levy and maximum term total debt issuance limitation.
- e. Any increase to the maximum debt mill levy, and the maximum debt mill levy imposition term, and/or the maximum operating mill levy that does not meet the criteria approved in the Metro District's approved service plan.
- f. Any changes to fees that do not meet the criteria approved in the Metro District's approved service plan.
- e. Changes in the boundaries of the Metro District.
- f. Any proposal to extend the dissolution date of the Metro District.
- g. Any changes required to authorize the Metro District to issue debt or impose a debt mill levy, operating mill levy, or fees subsequent to approval of a Conceptual Site Plan for the development served by the Metro District.

- (2) A petition for service plan amendment shall be submitted for any material modification. The petition shall include:
- a. Any changes to the service plan since it was approved by the city council including assumptions or projects furnished in conjunction with the original petition;
  - b. A detailed explanation of the action taken or alternatives considered, if any, by the Metro District to avoid the action, event or condition that resulted in the material modification to the service plan.
  - c. The impact of the material modification on the Metro District's ability to develop the capital facilities and infrastructure necessary to meet its capital development plan;
  - d. The effect of the material modification on the Metro District's ability to retire as scheduled its outstanding financial

obligations and its ability to issue and market additional indebtedness to finance additional capital expenditures; and

- e. Alternatives or options that would be available to the Metro District if the requested amendment was not approved by the city. The amendment shall be processed and reviewed in the same manner as prescribed by this chapter for initial service plan review. This section shall not impair the right of the city to bring an action in the district court to enjoin the activities of any Metro District.
- (3) A resolution of approval shall not be required for changes of a technical nature necessary only for the execution of the original service plan. The city shall determine if a change is technical in nature.
- (c) Any departure from the service plan as originally approved, except for technical changes as referred to in subsection (b)(2) of this section or, if such has been modified, from the service plan as modified, may be enjoined by the city by appropriate court action. The city council may pursue any or all of the following remedies in addition to court action:
    - (1) Withhold issuance of any permit, authorization, acceptance or other administrative approval necessary for the Metro District's development of public facilities or construction;
    - (2) Exercise any remedy under the terms of any intergovernmental agreement under which the Metro District is in default;
    - (3) Exercise any applicable remedy pursuant to Title 32 of the state statutes.
- 3. The City's model service plan for Metropolitan Districts is hereby amended as indicated by the addition of the words double-underlined and the deletion of the words stricken in the model service plan attached as Attachment A.
  - 4. The City's model intergovernmental agreement for Metropolitan Districts is hereby amended as indicated by the addition of the words double-underlined and the deletion of the words stricken in the model intergovernmental agreement attached as Attachment B.
  - 5. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.

6. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.
7. The repeal or amendment of any provision of the Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.
8. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on \_\_\_\_\_, 2021.

PASSED AND ADOPTED on second and final reading on \_\_\_\_\_, 2021.

CITY OF THORNTON, COLORADO

\_\_\_\_\_  
Jan Kulmann, Mayor

ATTEST:

\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
William A. Tuthill III, Interim City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, and Thornton Active Adult Center after first and second readings.

Published on the City's official website after first reading on \_\_\_\_\_, 2021, and after second and final reading on \_\_\_\_\_, 2021.

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